Supreme Court of the United States

OCTOBER TERM, 1946.

No. 80.

JACK PARKER, ISIDOR M. SAKS, MELVIN CAPLAN, DAVID WERTH, C. CLARENCE KASKEL, MORTON H. BARON, ROBERT HERMANN, SAMUEL OGUS, CHARLES MASLOW, GEORGE WILLETT, HARRY WIENER, CHARLES GOLDMAN, DAVID RUDBERG, WILLIAM F. HOHAUSER and SIDNEY MAYBAUM,

Petitioners,

vs.

PAUL A. PORTER, Price Administrator,

Respondent.

LANDLORDS' BRIEF, *AMICI CURIAE.*

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PAUL A. PORTER, Price Administrator,

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LANDLORDS' BRIEF, *AMICI CURIAE.*

Statement.

Upon written consent of the parties, this brief, *amici curiae*, is filed on behalf of the landlords of the respective apartments in the building occupied or formerly occupied by petitioners as tenants.

Landlords herein are in the anomalous position of having a direct interest in the outcome of this proceeding without being parties thereto. Motion for leave to participate in oral argument was denied on October 28, 1946.

Facts.

Fifty-Five Corporation, organized under New York laws, is the owner in fee of premises No. 55 Central

Park West, New York City (R. 2), on which stands a nineteen story residential apartment house, some apartments of which are occupied by petitioners (R. 4). These are luxury apartments in one of the finest residential areas of the city. Only two tenants remain in possession. Applications by the other tenants for stays of execution of warrants of eviction, made to Associate Justices Black and Reed successively, were refused, the latter on July 3, 1946.

Prior to February 17, 1945, two individuals, Victor M. Earle and Alexander B. Carver, planned to sell their entire capital stock holdings in Fifty-Five Corporation cooperatively to persons desirous of acquiring some of the apartments for their own use through proprietary leases (R. 5). At that time the Rent Regulation for Housing in the New York City Defense Rental Area, 8 F. R. 13914, did not contain any provision with respect to the percentage of total dwelling units in the cooperative which had to be purchased or held in order to obtain a certificate relating to eviction under Section 6(b)(2) of such regulation. On February 17, 1945, and while the cooperative was in process of organization, but before the landlords herein purchased their allotted stock and proprietary leases, the Rent Regulation was amended by the addition of Subparagraph (3) to Section 6(b), 10 F. R. 1974, so as to permit the issuance of a certificate, among other things, only when "* * * stock in the cooperative has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure * * *", Section 6(b)(3)(ii). The latter amendment left open the right to a certificate under 6(b)(2) if "* * * the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to

issue a certificate." Section 6(b)(3)(ii), Appendix A of this brief. Accordingly, Messrs. Earle and Carver requested from the Administrator a finding of hardship, resulting in the issuance of an interpretive letter by the Administrator on March 23, 1945, exempting the cooperative from the restrictions of Section 6(b)-(3) (R. 6). In reliance on the Administrator's interpretive letter and without any knowledge whatsoever of anything that might have transpired between Messrs. Earle and Carver and the Administrator before its issuance and in complete good faith and for value, landlords herein purchased their respective apartments in the cooperative which went into effect on June 1, 1945 (cf. Revised Procedural Regulation 3, 9 F. R. 10481, Section 1300.243, Appendix B of this brief).

Preliminary to the institution of dispossess proceedings in the local Municipal Court to obtain possession of their apartments upon termination of the tenants' leases, landlords filed their petitions in the Area Rent Office pursuant to Section 6(b)(2) of the regulation for a certificate authorizing each of them "to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law" (R. 7). The Area Rent Director ordered a hearing, purportedly under Section 1300.211 of the Revised Procedural Regulations 3, 9 F. R. 10484, in aid of his investigation under Section 1300.206, at which tenants were present and represented by counsel and where a comprehensive record was made (Section 1300.211 and Section 1300.206, Appendix C of this brief). The Area Rent Director denied the applications (R. 8). Landlords thereupon filed a petition for review under the Revised Procedural Regula-

tions (Section 1300.209), with the Regional Director who affirmed the denial below (R. 8). Landlords thereupon filed their protest under the Revised Procedural Regulations (Section 1300.216), and Section 203(a) of the Emergency Price Control Act with the Administrator in Washington, D. C. By order made on September 28, 1945, the Administrator granted the protest, reversed the decisions below and issued the certificates relating to eviction (Reported, *In the Matter of Gordon et al.*, 3 Opinions & Decisions 3301, 9/28/45, Pike & Fisher. For opinion and orders in full, see Appendix D this brief). The Administrator rejected both the charges of fraud and misrepresentation levelled at the original stock owners relative to the antecedent interpretive letter and rejected the claim directed at the purchasers of the stock of their non-compliance with the regulations relative to their applications for the certificates relating to eviction.

Tenants then filed their protest with the very Administrator (R. 8) who had sustained landlords' protest. It was dismissed. Tenants then filed a complaint with the United States Emergency Court of Appeals (R. 1), which was also dismissed (R. 83). Both dismissals were based on a lack of tenants' standing to protest and consequent absence of jurisdiction (R. 8, 83).

Question.

Are the petitioners "subject to", any provision of the Administrator's order in this case (Appendix D, page 26), within the meaning of Section 203(a) of the Emergency Price Control Act?

Order in Question.

The Administrator's order (Appendix D) granted the protest of the respective landlords and stated further that they "be and they hereby are, authorized, * * *, to pursue their remedies at local law to evict the tenant occupying the apartment in the building at 55 Central Park West, New York City, the number of which appears below next to his name:".

It is to be noted that this order is neither compelling nor prohibitory, but permissive as to the landlord, lifting a limitation with its implementing sanctions from him and leaving the landlord and his tenant to whom the order is not directed, in status quo in the first instance under local law.

Argument.

POINT I.

Tenant is not "subject to" any regulation or order.

Under "Title II—Administration and Enforcement" of the Act, it is provided in

> "Sec. 203. Procedure
>
> (a) At any time after the issuance of any regulation or order under section 2, * * *, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provisions * * *"

and in

"Sec. 204. Review

(a) Any person who is aggrieved by the denial or partial denial of his protest may, * * *, file a complaint with the Emergency Court of Appeals, * * *, specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part."

Concisely, Congress said a person must be "subject to" an order to entitle him to protest to the Administrator and if he cannot protest, he does not have any right of review in the Emergency Court of Appeals.

Hence, in construing Section 203(a), the quest is for the intent of the Congress in adopting the phrase "subject to".

"The manifest purpose of Congress in enacting this statute was to preserve and protect the economic balance of the nation during a period of grave emergency, thereby achieving the prevention of inflation and its consequences enumerated in Section 1. *Yakus* v. *United States*, 321 U. S. 414, 423, 64 S. Ct. 660, 666, 88 L. Ed. 834. That aim was implemented by criminal sanctions to be imposed on those who deliberately choose to ignore the national welfare in this respect by selling commodities at prices above established levels."

M. Krauss & Bros. v. *United States*, 66 S. Ct. 705, 707.

"When it came to rents Congress pursued the policy it adopted respecting commodity prices.

> It established standards for administrative action and left with the Administrator the decision when the rent controls of the Act should be invoked."
>
> *Bowles* v. *Willingham* [321 U. S. 503, 512], sustaining the constitutionality of the act with respect to Rent Regulations.

The Act, read in its entirety, made "enforcement", criminal and civil, the keystone of the arch of the control structure (Section 205). The tenant, like the ultimate consumer, was free from all restrictions and sanctions. He could do no wrong under the Act.

A survey of the hearings before the House Committee on Banking and Currency, 77th Cong., 1st Session, which embraced four months of deliberations, day and night, (Chairman Steagall's statement to the House, 77th Cong., 1st Session, p. 9080) displays a deep concern for the community in general in stabilizing the economy and no interest in whether an ultimate consumer or tenant *per se* gained or lost some benefit. Those hearings show too, as does the Act—Sections 203, 204—an intention not to permit the Administrator to get out of hand in the imposition of controls on the manufacturer, processor, distributor, and landlord.

Obedience, was the watchword.

> "Sec. 203(a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, to all persons *who are required to obey* the provisions of regulations or orders under Sec. 2." (Italics supplied.) Sen. Rep. No. 931, 77th Cong., 2d Sess., p. 22.

The same report, after describing the procedure in the Act, continues,

> "Thus any person *subject to* any provisions of any regulation or order issued by the Administrator under Section 2 has a right to object to such provision and a right to have his objections considered." (Italics supplied.)

Chairman Steagall of the House Committee on Banking and Currency, in the course of a dispassionate explanatory statement to the House of the objects and purposes of H. R. 5990—the Act—in conjunction with the submission of the committee report No. 1409, November 7, 1941, stated relative to Section 204,

> "Any protestant *subject to the prohibition* of a regulation or order issued under Section 2 and who is aggrieved by the denial or partial denial of his protest, may file a complaint." (Italics supplied.) 77th Cong., 1st Sess., p. 9074.

Congressman Steagall doubtlessly had reference to Section 4, of the Act, which is headed "PROHIBITIONS". Thus, tested by legislative history, it can be concluded that Congress intended to place a protective shield, through protest proceedings, only around those required to comply with a possibly unreasonable or invalid regulation or order.

To carry out the purposes of the Act the Administrator had the authority to adopt procedural regulations.

> "Sec. 201(d) The Administrator may from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act."

On January 12, 1943, he issued Revised Procedural Regulation No. 3, 8 F. R. 526, which stated in Section 1300.215 (now Section 200.216 9 F. R. 10484):

> "A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or an order, only if such provision prohibits or requires action by him."

His policy, so expressed, followed Section 1300.9 RPR No. 1, 7 F. R. 971, issued February 12, 1942 with respect to commodities.

> *Bowles* v. *Seminole Rock & Sand Co.*, 65 S. Ct. 1215, 1217.
>
> "Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. The intention of Congress or the principles of the Constitution in some situations may be relevant in the first instance in choosing between various constructions. But the ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."

The Emergency Court of Appeals approved of the Administrator's interpretation and policy since the Act's inception.

> *Buka Coal Company* v. *Brown*, 133 F. 2d 949;
> *Thomas Paper Stock Co.* v. *Bowles*, 148 F. 2d 831, 837;
> *Horns* v. *Bowles*, 151 F. 2d 191, 194;
> *Bayuk Cigars Inc.* v. *Porter*, 154 F. 2d 503, 513.

In *Horns* v. *Bowles*, 151 F. 2d 191, 194, it is stated:

> "'In *Thomas Paper Stock Co.* v. *Bowles*, 1944, 148 F. 2d 831, 837, we said that the primary purpose of the protest procedure provided in Sec. 203 of the Act, 50 U. S. C. A. Appendix, Sec. 923,' is to afford to a person subject to a provision of a regulation or order which he believes to be invalid the opportunity to present his objections thereto to the Administrator and to request its modification or recission *in order that he may not have to obey it in the future.*" (Italics ours.)

The Appellate Division of the Supreme Court in New York so interpreted the Act.

> *Werth* v. *Gordon*, 270 App. Div. 255, (motion for leave to appeal to the Court of Appeals denied, 270 App. Div. 753).
>
> "* * * We might add that it is even doubtful that the plaintiffs have any standing before the Emergency Court of Appeals. Under the OPA legislation the only person who may appeal to the Emergency Court of Appeals is one who is aggrieved by the denial of his protest by the Administrator, and the only person who may file a protest with the Administrator is one who is 'subject to any provisions' of a regulation or order of the OPA (Sec. 203(a), Emergency Price Control Act, Tit. 50 U. S. C. A. Appendix Sec. 923(a)). As the Landlord, rather than the tenant, is subject to the provisions of the OPA, the plaintiffs would appear not to have any standing to protest the Administrator's order or appeal to the Emergency Court of Appeals."

The Administrator's interpretation as to commodities seemingly has been approved by this Court.

Collins et al. v. *Porter,* 66 S. Ct. 893, 894.

> "His contention that the petitioner is not a 'person subject to * * * (the) regulation,' Sec. 203(a), is amply refuted by the continuing liability of the petitioners, *United States* v. *Hark,* 320 U. S. 531, 64 S. Ct. 359, 88 L. Ed. 290, for some $6,800,000, should their arguments as to the invalidity and inapplicability of the regulation be rejected when the case is considered on the merits."

In addition to the practical acceptance of the Administrative interpretation and conduct with regard to protest procedure, Congress has never extended or enlarged the field of protestants. (Hearings: S.C. on B & C, 78th Cong., 2d Sess. on S1764, pp. 474, 1304, 1325, 1330, 1367, 14[redacted]; H. C. on B & C, 78th Cong., 2d Sess. on H. R. 4376, pp. 449, 495, 568; S.C. on B & C., 79th Cong., 1st Sess. on S.J. Res. 30, p. 452.)

> "Failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which impliedly recognizes the judicial construction as effective, is persuasive of legislative recognition that the judicial construction is the correct one."

Apex Hosiery Co. v. *Leader,* 310 U. S. 469, 488.

The amendment to Section 203(a) of the Price Control Act of 1942 made by Section 106 of the Stabilization Act of 1944, 58 Stat. 632, 638, enlarged the time to protest from "within sixty days" to "at any time" (see *Utah Junk Co.* v. *Porter,* 66 S. Ct. 888) for those

who were "subject to" the regulation or order, but did not repudiate the Administrator's and the Courts' accepted definition of who was properly a protestant.

Section 204(b) and (d) of the Act proscribe judicial interference with Administrative orders. Had Congress in mind protest of a decontrol order,—for that in effect is the order or certificate here—invocation of the protest procedure by a tenant would have been in vain for in the meanwhile he would have been evicted through proceedings under local law. Certainly such purposeless result should not be ascribed to Congress.

> "Significantly the recent Emergency Price Control Act of 1942, 56 Stat. 23, explicitly denies the power of the reviewing courts to enjoin enforcement of the administrative orders."
>
> *Scripps Howard Radio* v. *F. C. C.*, 316 U. S. 4, 17.

In *Utah Junk Co.* v. *Porter, supra,* it was held that Congress intended that a protestant have the right to file a protest "at any time". Is it reasonable to suppose that Congress intended that the ultimate consumer and the tenant be "subject to" the relaxing regulations and orders, thereby opening the floodgates to their protests from the Act's inception?

POINT II.

The potential administrative burden prompted Congress to confine protest rights to those "subject to" sanctions.

Congress intended not to permit every ultimate consumer and every tenant in a defense rental area to protest any regulation or order because the adminis-

trative burden would have been so enormous as to clog the machinery and defeat the purpose of the Act.

In discussing the limitation on a proposed amendment to Section 204 of the Act in connection with Stays in Criminal Proceedings, etc., Stabilization Extension Act of 1944; Chapter 325, Public Law 383, Section 107(b), the Senate Committee on Banking and Currency, Sen. Rep. No. 922, May 30, 1944, stated:

> "The wisdom of thus limiting the amendment becomes apparent when the enormous task of enforcing price and rent control is appreciated. We are informed, for example, that the number of enforcement proceedings instituted each month for price or rent violations has recently been averaging over 700. If in every one of these cases the validity of the regulations could be challenged, even though only to delay trial by contesting the regulation in the Emergency Court of Appeals, enforcement would break down completely, while the absorption of the operating staff in the resulting flood of litigation in that court would seriously interfere with effective administration."

With greater force should the observation apply to a tenant who is not subject to sanctions and is in no worse position under local law than he was before the creation of the defense-rental area.

The Administrator's periodical reports to Congress, required by Section 301 of the Act (not less frequently than every ninety days), are eloquent testimony to the monumental task he has performed. Statistics relative to administration of rent control are set forth in Appendix E.

It is submitted that Congress would have been most

unwise and impractical to have intended to include persons untouched by sanctions in the clause "subject to".

POINT III.

Tenant did not acquire any vested right.

The argument has been advanced that the tenant received some right to remain in possession of his housing accommodations until denied after notice, hearing and judicial review. Recourse is had to Section 2(d) of the Act. It reads:

> "Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which, in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act."

It solely indicates a Congressional desire to prevent "price or rent increases * * * inconsistent with the purposes of this Act".

What Congress had in mind, is revealed by Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 17 on market and renting practices.

> "In order to achieve effective price control it

may often be necessary to regulate or prohibit practices which are equivalent to *concealed price or rent increases* or which are likely to result in price and rent increases inconsistent with the purposes of the bill." (Italics supplied.)

Recourse is also had to Section 4(b) of the Act which reads:

"It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, actiof authorized or required by this Act or any regulation, order, or requirement thereunder."

But that section was included by Congress:

"In furtherance of effective administration and to prevent the *intimidation* of tenants * * *

"Section 4(b) protects tenants in the assertion of the rights conferred on them by the bill * * *" (Italics supplied)

Statement of Chairman Steagall of the House Committee on Banking and Currency, 77th Cong., 1st Sess., p. 9072, Vol. 87, Part 8.

A fortiori, Section 4(d) of the Act displays a contrary intent.

"Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent."

In the light of this latter express declaration and the absence of any appropriate provision in the Act, it is submitted the Administrator had no power to

grant a vested right to continued possession of housing accommodations. Nor should such right be implied.

Vis-a-vis the landlord, the reasonableness of Rent Regulations for Housing and the Procedural Regulations have been passed upon and approved.

Bowles v. *Willingham*, 321 U. S. 503.

That case determined that the Act did not clash with the Fifth Amendment because Congress failed to provide for a hearing to landlords in advance of the administrative creation of a defense rental area. If the Administrator were to eliminate the area without notice, the landlord could not complain. Certainly, the tenant, who is not subject to the civil and criminal penalties of the Act, should not be heard to complain.

Mr. Justice Rutledge in his concurring opinion in *Bowles* v. *Willingham*, stated at page 522:

> "* * * The power to specify defense rental areas, rather than amounting to an excess of permissible delegation, is actually a limitation upon the administrator's authority, restricting it to regions where the facts, not merely his judgment, make control of rents necessary both to keep down inflation and to carry on the war activities concentrated in them."

Since the Administrator has the power to further attenuate his sway over defense rental areas through exceptions in the regulations, as ruled in

Taylor v. *Brown*, 137 F. 2d 654, certiorari denied 320 U. S. 787,

it would follow that the time when and the circumstances where he so acts should be solely his concern.

Ordinarily, in an emergency of acute shortage of housing accommodations, the State would fundamentally regulate occupancy and incidentally fix reasonable rentals.

Edgar A. Levy Co. v. *Siegel*, 258 U. S. 242.

See also:

Block v. *Hirsh*, 256 U. S. 135.

Here, in this temporary emergency, the Federal Government fundamentally regulates prices and rents to prevent inflation and as an incident thereto, through an administrative regulation, imposes a ban on a landlord to obviate eviction pressures which might lead to underhand and black market transactions tending to frustrate the stabilization objective.

On November 9, 1946 the President of the United States directed the

> "immediate abandonment of all control over wages and salaries and all controls over prices except that necessary to implement the rationing and allocation program of sugar and rice. Rent control, however, must and will be continued."

He further stated:

> "The reasons which impel the lifting of price controls are not applicable to rents. Housing is desperately short and will continue to be short for a long time to come. Tenants are in no position to resist extortionate demands.
>
> "The fixing of rents by the ordinary processes of bargaining would bring hardship and suffering to our people. It may be that some adjustments

of rents will be required, but control of rents and control over evictions must be continued."

The question is posed, whether in the absence of an intent to control the economy in checking inflation and the presence only of a housing shortage—a matter of local concern—the system of Federal rent control can constitutionally stand. New York State, among others, has foreseen the eventualities and created its own system to prevent hardship. (Chapter 274, Laws of New York 1946, effective March 30, 1946.)

In

Bowles v. *Willingham*, 321 U. S. 503, 521,

it is stated:

"With reference to the substantive aspects of the legislation, I would add here only the following: Since the phases in issue in this case relate to real estate rentals, it is not amiss to note that these ordinarily are within the state's power to regulate rather than that of the federal government. But their relation, both to the general system of controlling wartime price inflation and to the special problems of housing created in particular areas by war activities, gives adequate ground for exercise of federal power over them.

"Likewise, with respect to the delegation of authority to the administrator to designate 'defense rental areas' and to fix maximum rentals within them, the same considerations, and others, sustain the delegation as do that to fix prices of commodities generally."

It is submitted that no vested right has been acquired by tenant.

POINT IV.

Tenants never became parties to any proceedings in a juridical aspect.

Revised Procedural Regulation No. 3 was designed to facilitate the procurement of evidence from every reliable source upon consideration of a landlord's petition (Secs. 1300.206, 1300.211). The tenant was at most an aid to the Administrator. Indeed, on tenants' applications, administrative action is "within the discretion of the Rent Director" and the procedure is the same as in proceedings initiated by the Rent Director (Secs. 1300.205, 1300.207 and Rent Regulation, Sec. 5(a)).

The Administrator is not acting as a judge in a contest between parties. He is really the tenants' advocate and *alter ego* in effecting the purposes of the Act.

In

Porter v. *Warner Holding Co.*, 66 S. Ct. 1086,

the Administrator was sustained in his attempt to seek, for the benefit of tenants, restitution of illegally exacted rents—something the tenants could not do.

In

Porter v. *Dicken*, 66 S. Ct. 1094,

the Administrator was sustained in his effort to obtain an injunction in the Federal District Court to restrain an unlawful eviction of a tenant in a state court proceeding.

See also:

Porter v. *Lee*, 66 S. Ct. 1096.

It is submitted that by inviting the tenant to participate in the initial search for evidence before the Area-Rent Director the Administrator did not make the tenant subject to the Act and a party-protestant.

In the absence of a public right requiring protection or a justiciable private right, one could not become a party in the regular courts.

Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U. S. 261.

POINT V.

Tenants have not been denied due process.

This is not a case for resort to the protection of the Fifth Amendment. It has been demonstrated that Congress never intended to vest or empower the Administrator to vest in tenant any right to maintain possession of the housing accommodation.

In construing the Federal Communications Act—permanent legislation—this Court stated:

> "The policy of the Act is clear that no person is to have anything in the nature of a property right as a result of the granting of a license."
>
> *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470, 475.

Here, less than a grant of a license is involved.

Due process of law is not denied when an opportunity is not given to be heard on a question to be

settled, not by a judicial proceeding, but by the action of the agents of the Government.

Butterfield v. *Stranahan*, 192 U. S. 470, 497.

> "It is urged that there was a denial of due process of law in failing to accord plaintiff in error a hearing before the Board of Tea Inspectors and the Secretary of the Treasury in establishing the standards in question, and before the general appraisers upon the reexamination of the tea. Waiving the point that plaintiff in error does not appear to have asked for a hearing, and assuming that the statute did not confer such a right, we are of the opinion that the statute was not objectionable for that reason. The provision in respect to the fixing of standards and the examination of samples by government experts, was for the purpose of determining whether the condition existed which conferred the right to import, and they therefore in no just sense concerned a taking of property. This latter question was intended by Congress to be finally settled, not by a judicial proceeding, but by the action of the agents of the Government, upon whom power on the subject was conferred."

Nor is due process denied when Congress expressly grants review to the category of persons subject to the Administrator's order and obviously elects to otherwise withhold it.

Estep v. *U. S.*, 66 S. Ct. 423, 426.

> "Apart from constitutional requirements, the question whether judicial review will be provided where Congress is silent depends on the whole setting of the particular statute and the scheme of regulation which is adopted. *Switch-*

men's Union v. National Mediation Board, 320 U. S. 297, 301, 64 S. Ct. 95, 97, 88 L. Ed. 61. And except when the Constitution requires it, judicial review of administrative action may be granted or withheld as Congress chooses."

CONCLUSION.

The judgment of the United States Emergency Court of Appeals should be affirmed.

Respectfully submitted,

LOUIS L. TETELMAN,
Attorney for Landlords, Amici Curiae.

On the brief:
LOUIS L. TETELMAN,
GERTRUDE TETELMAN,
SYLVIA U. SIEGEL,
HARRY CARROLL,
all of New York City.

APPENDIX A.

(3) Occupancy by purchaser of stock in a cooperative.—

(I)

* * * * *

(II) Where the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after February 17, 1945, or the effective date of Regulation, whichever is the later, or where the purchased stock originally was issued on or after that date, no certificate shall be issued, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless, at the time of issuance of the certificate, stock in the cooperative has been purchased by persons who are then tenants of at least 80 percent of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(III)

* * * *

(IV) In all other cases, including those excepted from paragraph (B)(3)(II) and (III), the issuance of a certificate shall be pursuant to paragraph (b)(2).

APPENDIX B.

§ 1300.243 *Interpretations.* An interpretation given by an officer or employee of the Office of Price Administration with respect to any provision of the Act or any maximum rent regulation or order thereunder, will be regarded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with §§ 1300.244 to 1300.246, inclusive, of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation or order to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is given unless issued as an interpretation of general applicability.

[§ 1300.243, formerly § 1300.241, amended by Am. 9, effective 9-1-44]

APPENDIX C.

§ 1300.211 *Oral hearings*—(a) *Requests for oral hearing.* Any petitioner or applicant may request an oral hearing. Such request shall be accompanied by a showing as to why the filing of affidavits or other written evidence and briefs will not permit the fair and expeditious disposition of the petition or application. In the event that an oral hearing is ordered, notice thereof shall be served on the petitioner or applicant not less than five days prior to such hearing. The time and place of hearing shall be stated in the notice. A presiding officer will be appointed with all necessary powers to conduct the hearing. Any such oral hearing may be limited in such manner and to such extent as deemed appropriate to the expeditious determination of the proceeding.

§ 1300.206 *Investigation of petitions and applications.* Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

APPENDIX D.

UNITED STATES OF AMERICA

BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. RPA-II-425-P

In the Matter of

DAVID GORDON, et al.,
Protestant.

ORDER GRANTING PROTEST

On September 7, 1945, David Gordon of 41 West Seventy-Second Street, New York City, and twenty-four other purchasers of stock in the 55 Corporation, a New York Corporation, filed a protest against an order issued on September 7, by the Acting Regional Administrator of the Office of Price Administration for Region II which denied an application for review of an order entered by the rent director for the New York City Defense-Rental Area, denying the protestants' petitions for certificates of eviction permitting them to pursue their remedies at local law for the eviction of tenants of certain apartments located in the building at 55 Central Park West, New York City. Protestants first requested, but subsequently waived, consideration of their protest by a Board of Review.

Due consideration has been given to the protest and the record of the proceeding had herein. An opinion in support of this order has been issued simultaneously herewith.

For the reasons stated in the accompanying opinion, in accordance with the Emergency Price Control Act

of 1942, as amended, the Rent Regulation for Housing in the New York City Defense-Rental Area, and Revised Procedural Regulation No. 3, it is hereby ordered that:

1. That protest Docket No. RPA-II-425-P, be and it hereby is, dismissed as to Victor M. Earle, Alexander B. Carver and Fifty-Five Corporation.

2. That the protest of David Gordon and the other individual protestants be, and it hereby is, granted.

3. That each of the individuals listed below, be and they hereby are, authorized, on and after December 14, 1945, to pursue their remedies at local law to evict the tenant occupying the apartment in the building at 55 Central Park West, New York City, the number of which appears below next to his name:

Name	Apartment
David Gordon	10-A
Jacques Braunstein	14-A
Mrs. Sophie Tager	16-A
Ellis Amour	18-A
William J. McEnery	18-B
Mrs. Eleanor-Lee Hartwell	8-C
Solomon Kipnis & Mrs. Sylvia Fox	11-C
William F. & Mrs. Katherine Gorman	13-C
Alexander Adler	14-C
William Floyd Davis	15-C
Adolph G. & Mrs. Alice S. Ruthman	14-D
Joseph L. Friedman	16-D
Charles Everett	17-D
Mrs. Elizabeth Schaeffer	18-D

Howard E. Kershner	19-D
Abraham D. & Mrs. Lillian Bressman	14-E
Samuel Kipnis	15-E
Mrs. Rhoda Cartier	13-F
Henry & Mrs. Margaret H. Zaun	15-F
Mrs. Ada M. Becker	18-F
Harry Goldstein	19-F
Julius M. Levine	9-G
Jack Rosen	10-G
Herman Goodman	12-F

4. That each of the individuals named in paragraph 3, above, be and he hereby is, authorized to request that this order be amended, insofar as it is applicable to him, to specify a date earlier than December 14, 1945, upon which he may pursue his remedy at local law for the eviction of the tenant occupying the apartment listed next to his name in paragraph 3, above, by filing an original and 5 copies of such request, together with his affidavit showing the special hardship that would result to him if an earlier date is not substituted, with the Secretary, Office of Price Administration, Washington 25, D. C., within 30 days from the date of this order. Issued and effective this 28 day of September, 1945.

CHESTER BOWLES,
Administrator

UNITED STATES OF AMERICA

BEFORE THE OFFICE OF PRICE ADMINISTRATION

Docket No. RPA-II-425-P

In the Matter of

DAVID GORDON, et al.,

Protestant.

OPINION ACCOMPANYING ORDER GRANTING PROTEST

On September 7, 1945, David Gordon of 41 West Seventy-Second Street, New York City, and twenty-four other purchasers of stock in the 55 Corporation, a New York Corporation, filed a protest against an order issued on September 7, by the Acting Regional Administrator of the Office of Price Administration for Region II which denied an application for review of an order entered by the rent director for the New York City Defense-Rental Area, denying the protestants' petitions for certificates of eviction permitting them to pursue their remedies at local law for the eviction of tenants of certain apartments located in the building at 55 Central Park West, New York City.[1]

The applications for review, directed to the Regional Office of the Office of Price Administration, were filed by the twenty-four purchasers of stock in the above corporation and were consolidated by the Regional Administrator in his order denying the applications for review since identical questions of law and fact are involved in each case and all the apart-

[1] Victor M. Earle, Alexander B. Carver and Fifty-Five Corporation joined in the protest. The protest must be dismissed as to them since they are not subject to the orders protested.

ments for which certificates were sought are located within one multiple-unit building.

The protestants are the purchasers of shares of the capital stock of the 55 Corporation under a share-ownership plan entered into between the former owners of all the capital stock of the corporation and the respective purchasers under which the purchasers have become entitled, by reason of their acquisition of such stock, to proprietary leases covering certain apartments in the premises owned by the corporation. The plan establishes what is commonly known as a cooperative corporation and the respective protestants are seeking possession of apartments to which they are entitled under proprietary leases, pursuant to Section 6(b)(2) of the Rent Regulations, as cooperative owners.

It appears from the record that prior to June 1, 1945, on which date, pursuant to the terms of the agreement between the former owners of the capital stock and the cooperative purchasers, the plan was declared effective, all of the capital stock of 55 Corporation was owned by Victor C. Earle and Alexander D. Carver. It is alleged that some time prior to October 30, 1944, Earle and Carver who were, at that time, the owners of all the capital stock in the corporation conceived the idea of forming a cooperative and the sale of the outstanding capital stock to cooperative owners. Under Date of October 30, a request for interpretation on behalf of the corporation was addressed to the New York City Area Office of the Office of Price Administration, requesting advice as to whether, if the corporation was reorganized as a cooperative and all of the stock in the corporation purchased by cooperative owners entitled to proprietary leases, certificates would issue permitting such owners to gain possession of apartments purchased by them under Section 6(b)(2) of the Rent Regulation for Housing in the New York City Defense-Rental

Area. On November 17, a letter was sent to all of the tenants in the building owned by the corporation outlining the cooperative plan in general terms. On December 14, a printed copy of the plan and a subscription agreement were forwarded to all of the tenants. Under the plan it was contemplated that sufficient capital stock of the corporation would be sold to purchasers of apartments by the then owners to produce a maximum of $390,000. Out of the 115 units in the building, not more than 35 were to be sold, the sales prices to be determined on the basis of the number of rooms in the apartments. Actually, on June 1, when the plan was declared operative, stock allocable to 28 apartments had been sold for a total sales price of $389,300. The purchaser of stock allocable to a particular apartment became entitled, when the plan was declared effective, to a proprietary lease for a four-year term, renewable for ten successive four-year periods on the apartment covered by the particular stock purchased by him. The proponents of the scheme contracted that when the plan was declared effective the outstanding obligations of the corporation would not exceed $1,550,000 evidenced by a first mortgage held by the Metropolitan Life Insurance Company providing for specified rates of interest and amortization payments.

It further appears from the evidence that between November 17 and the early part of February 1945, efforts were made by Earle and Carver to sell the apartments in the building to cooperative owners. While the greater emphasis was placed on the sale of apartments to existing tenants, a number of prospective outside purchasers were likewise solicited, although no public advertisement of the apartments in question took place. During this period Victor Earle continued to press for the interpretation requested on October 30, 1944. Shortly prior to February 17, 1945 Earle was finally advised that certificates of evic-

tion would issue in favor of the purchasers of units in the building providing that there was full compliance with the provisions of Section 6(b)(2) of the Regulation, including compliance with the twenty per cent payment required of said section.

On February 17, 1945 the Rent Regulation for Housing in the New York City Defense-Rental Area was amended by the addition of a new section, 6(b)(3), which provides that no certificates authorizing the eviction of an existing tenant in a cooperative will issue if the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after that date, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless certain other conditions not pertinent to the case at hand were met. Earle, upon the issuance of this amendment, applied to the New York City area rent office for a determination as to whether the cooperative proposed by the printed plan of December 1, 1944 was, within the meaning of the Regulation, in the process of organization on February 17, 1945, and requested that if such finding was in the affirmative, that it be held exempt from the provisions of Section 6(b)(3) on the ground that substantial hardship would result from a failure to issue certificates. His request was supported by certain affidavits relating to steps taken by Earle and his associates and employees to implement the proposed cooperative plan and naming certain existing tenants and outside parties who had been contacted and were alleged to have evinced a definite interest in purchasing apartments. Certain letters from persons contacted by Victor Earle or his agents were likewise submitted to support the allegations of the above affidavits. After consideration of the affidavits and supporting letters in question, the New York City

Area Office advised Earle by letter dated March 23 that, based on the facts presented, the corporation would be held exempt from the provisions of Section 6(b)(3), under the so-called "hardship" clause of that section, and that certificates would issue to purchasers of apartments of the premises, providing the provisions of Section 6(b)(2) were fully met.

Subsequently, Earle and Carver sold to various purchasers a sufficient number of apartments in the premises to declare the plan effective. On May 29, 1945, 28 apartments in the premises had been sold for the sum of $389,300 and the purchasers became entitled to the issuance to them of 38.93 shares of the capital stock, the remaining stock of the corporation then outstanding to be returned under the plan to the corporate treasury. The $389,300 was on that date on deposit in a certain account in the Chase National Bank, denominated, "Victor M. Earle and Alexander B. Carver, trust account." On May 29, Earle and Carver withdrew from these accounts sufficient money to pay the existing indebtedness of the corporation down to $1,540,583.42, turned over the balance of stock held by them above the 38.93 shares to be issued to purchasers of apartments of the premises to the corporate treasury and on June 1, 1945 declared the plan in effect. Between June 14 and June 18, 25 of the stockholders in the corporation, who became entitled to possession of apartments under the plan, petitioned for certificates of eviction to the New York City Defense-Rental Area Office. The remaining purchasers of the apartments in the building did not so apply and are not parties to these proceedings.

The issues presented for the Administrator's determination in this proceeding are:

(1) Whether the protestants fall within the pur-

view of the exemption provision of Section 6(b)(3) of the Regulation; and,

(2) Whether they have met the down payment provisions of Section 6(b)(2) of the Regulation. If the answer to both of these questions is in the affirmative, the protestants are entitled to the certificates relating to eviction.

Whether or not the Area Rent Office should have advised the 55 Corporation that it fell within the exemption provision of Section 6(b)(3) of the Regulation on March 23, 1945, and even though the Administrator is empowered to reverse such determination at this time, it is the opinion of the Administrator, in the light of the entire record and particularly the action of the protestants in purchasing shares in the cooperative organization in reliance on the advice of the Area Office that the protestants should be held to come within the "hardship" exemption clause. In reaching this conclusion the Administrator has examined with care the evidence adduced for the purpose of showing that the letter of March 23 was obtained through fraud and misrepresentation. Without commenting on the evidence in detail, it is sufficient to say that, although there is some variation between the representations of Earle and the facts, it does not disclose that the letter of March 23 was secured through fraud and misrepresentation.

With respect to the question of whether the protestants have met the down payment provisions of Section 6(b)(2) of the Regulation, the record discloses that when they applied for the certificates relating to eviction, the determinative date, they had made cash payments of $389,300 on a purchase price of $1,929,883.42 or slightly in excess of twenty per cent and that the amount paid by the purchasers in each case amounted to twenty per cent of the purchase price of their individual apartments taking into

consideration the portion of the total underlying mortgage allocable to each apartment. The protestants have, therefore, established their right to certificates relating to eviction.

Section 6(b)(2) of the Regulation now provides that a certificate shall authorize pursuit of local remedies for eviction at the expiration of six months after the date of the filing of the petition. However, it also provides that a certificate may authorize the pursuit of local remedies for eviction at a time less than six months after the filing of the petition if the Administrator finds that "special hardship" would result if the petitioner were required to wait until six months after the filing of the petition to pursue local remedies. Protestants will be authorized to pursue their local remedies on December 14, 1945, approximately six months after the filing of the petitions.[2] However, each of the protestants will be afforded an opportunity to request that he be permitted to pursue his local remedies at an earlier date upon a showing of the hardship to which he would be subjected if he was requested to wait until after December 14, 1945, to secure possession of the apartment to which he is entitled.

For the foregoing reasons, the protest should be granted.

Issued and effective this 28 day of September 1945.

CHESTER BOWLES,
Administrator.

[2] The petitions were filed between June 14 and 18, 1945.

UNITED STATES OF AMERICA

Before the Office of Price Administration

Docket No. RPA-II-425-P

In the Matter of

David Gordon, et al.,

Protestant.

Order Modifying Order Granting Protest

On September 7, 1945, a protest was filed in the above matter. On September 28, 1945, an order granting the protest was issued with an accompanying opinion. The order permitted the individual protestants to file request for the amendment of the order granting the protest. On the same day, seven affidavits were filed by or on behalf of individual protestants seeking amendments to the order granting the protest.

In the opinion accompanying the order granting the protest the Administrator stated:

> "Section 6(b)(2) of the Regulation now provides that a certificate shall authorize pursuit of local remedies for eviction at the expiration of six months after the date of the filing of the petition. However, it also provides that a certificate may authorize the pursuit of local remedies for eviction at a time less than six months after the filing of the petition if the Administrator finds that 'special hardship' would result if the petitioner were required to wait until six months after the filing of the petition to pursue local remedies. Protestants will be authorized to pursue their local remedies on December 14, 1945, approximately

six months after the filing of the petitions.[1] However, each of the protestants will be afforded an opportunity to request that he be permitted to pursue his local remedies at an earlier date upon a showing of the hardship to which he would be subjected if he was required to wait until after December 14, 1945, to secure possession of the apartment to which he is entitled."

On the basis of the affidavits filed on September 28, 1945, and the entire record of the proceedings, it is the opinion of the Administrator that, David Gordon, Julius M. Leving, Charles Everett, have established that their failure to be authorized to pursue their remedies at Local law, to secure the eviction of the tenants occupying the apartments which they have purchased, by October 1, 1945, rather than December 14, 1945, will result in special hardship to them.

The Administrator has concluded that the other protestants on whose behalf affidavits were filed on September 28, 1945, have not established their right to similar relief since they have not personally requested such relief, or established the facts alleged. In reaching this conclusion the Administrator has not passed upon the substance of their claims to such relief. They may, therefore, file further requests in conformity with the order granting the protest.

Therefore, in accordance with the Emergency Price Control Act of 1942, as amended, the Rent Regulation for Housing and the New York City Defense-Rental Area, Revised Procedural Regulation No. 3, and the order granting protest, issued September 28, 1945, it is hereby ordered:

1. That the order granting the protest in the above entitled proceeding, dated September 28, 1945,

[1] (Fn. in original) The petitions were filed between June 14 and 18, 1945.

be, and it hereby is, modified by striking from paragraph 3 of such order, the names David Gordon, Julius M. Levine and Charles Everett.

2. That each of the individuals listed below be, and he hereby is, authorized, on and after October 1, 1945, to pursue his remedy at local law to evict the tenant occupying the apartment in the building of 75 Central Park West, New York City, the number of which appears below next to his name.

Name	Apartment
David Gordon	10-A
Julius M. Levine	9-G
Charles Everett	17-D

Issued and effective this 28 day of September 1945.

CHESTER BOWLES,
Administrator

APPENDIX E.

For example, as of March 31, 1944, 746,000 separate landlords' petitions were acted upon and 363,000 rent increases permitted (Chester Bowles Administrator before House Committee on Banking and Currency, 78th Cong., 2d Sess., May 1944, Vol. II, p. 216).

Since the beginning of rent control in June 1942 to April 1, 1945, 1,216,495 landlords' petitions were received and 496,819 rent adjustments granted. As to tenants, 2,612,062 complaints were received and 784,147 adjustments were effected (Ivan D. Carson, Deputy Administrator, before House Committee on Banking and Currency, 79th Cong., 1st Sess., June 1945, Part I, p. 84).

Up through the Spring of 1946, 750,000 rent increases were granted landlords (Paul A. Porter, Administrator, House Committee on Banking and Currency, 79th Cong., 2d Sess., March 1946, Vol. II, p. 1673).

Up to about November 1946, 1,600,000 landlords' petitions were received and 800,000 rent adjustments granted (Ivan D. Carson, testimony before American Legion's Housing Committee reported in N. Y. Times, Nov. 6, 1946, p. 25).

SUPREME COURT OF THE UNITED STATES

No. 80.—October Term, 1946.

Jack Parker, Isidor M. Saks, Melvin Caplan, et al., Petitioners. *v.* Philip B. Fleming, Temporary Controls Administrator.	On Writ of Certiorari to the Emergency Court of Appeals.

[January 20, 1947.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners are tenants of a New York apartment house. Their landlords applied for a certificate from the New York Area Rent Director authorizing eviction proceedings in the State courts.[1] Section 6 of the Rent Regulations for New York City, issued by the Price Administrator under authority of § 2 of the Emergency Price Control Act, 56 Stat. 23, 58 Stat. 632, 50 U. S. C. App. Supp. V, § 902, prohibits landlords from instituting such proceedings except under certain specific conditions not here relevant,[2] or when a special certificate authorizing eviction is issued by the Area Rent Director upon his find-

[1] The landlords here claimed to be purchasers of stock in a co-operative apartment corporation which stock holding entitled each of them to possession of an apartment under a proprietary lease.

[2] Section 6 (a) of the Rent Regulations for New York City Defense Area, 8 Fed. Reg. 13914, as amended, provides that "no tenant shall be removed from any housing accommodation, by action to evict . . . unless:" (1) The tenant has refused to renew his lease; (2) The tenant has unreasonably refused the landlord access to the premises; (3) The tenant has violated an obligation of tenancy or is committing a nuisance; (4) Subtenants occupy the premises at the time of the expiration of the prime tenant's lease; (5) The landlord "has an immediate compelling necessity to recover possession . . . for use and occupancy as a dwelling for himself."

ing, for example, that failure to authorize eviction would impose "substantial hardship" upon the landlords.[3]

In this case the Area Rent Director refused to issue the requested certificate after extensive hearings at which both the landlords and the tenants presented evidence. Denial was based on a finding that the landlords had wholly failed to meet the regulation's conditions; that their request was part of a concerted plan to evade the Price Control Act; and that a fraud had been perpetrated against the OPA. The Regional Rent Director affirmed this ruling. On protest by the landlords, the Price Administrator reversed the ruling of the Area Director and ordered that the certificate be issued. Petitioners thereupon filed a protest of their own with the Administrator. When the Administrator dismissed this protest, they sought relief in the Emergency Court of Appeals, complaining that the Administrator's order was "not in accordance with law" and was "arbitrary and capricious." On motion of the Administrator, that action was dismissed on the ground that petitioners were not "subject to" the Administrator's order and therefore had no right to protest or have judicial review of the dismissal of their protest. *Parker* v. *Porter*, 154 F. 2d 830.[4] We granted

[3] Section 6 (b) (3) "applies to the issuance of a certificate for occupancy of housing accommodations in a structure or premises owned by a co-operative corporation . . . by a purchaser of stock . . . in such co-operative who is entitled by reason of ownership of such stock to possession of such housing accommodations by virtue of a proprietary lease or otherwise." The part of § 6 (b) (3) ii pertinent here provides that where the co-operative was organized after February 17, 1945, or the effective date of the regulation, "no certificate shall be issued, unless on such date the co-operative was in process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate. . . ."

[4] The original respondent here was Paul A. Porter, Price Administrator. The functions of his office have been assumed by Phillip B. Fleming, Temporary Controls Administrator, who has been substituted as respondent.

certiorari because of the importance of the issue raised. —U. S. —.

Section 204 (a) of the Emergency Price Control Act provides that "Any person who is aggrieved by the denial . . . of his protest" against an order of the Price Administrator issued under § 2 of the Act may, upon complaint to the Emergency Court of Appeals, secure a judicial review of the Administrator's denial of such "protest." Under § 204 (b) that Court can enjoin or set aside the protested "order" in whole or in part only if it is satisfied that the order "is not in accordance with law, or is arbitrary or capricious." But § 203 (a) denies the right to make a "protest" upon which review may be had to all but persons who are "subject to any provision of such . . . order." The Emergency Court of Appeals did not question that the petitioners were "aggrieved" within the meaning of § 204 (b) by the Administrator's special order authorizing their landlord to institute legal proceedings to evict them from their apartments. *See Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470, 476, 477. Review was denied solely on the ground that they were not "subject to" that order within the meaning of § 203 (a).

In deciding a case concerning review of the Administrator's order granting a special exception to one of his general regulations, we are mindful that the legislative history of the Price Control Act strongly indicates that judicial review of the Administrator's general regulations and orders was intended by Congress to be limited to relatively few of the millions of people who would be more or less affected by them. Congress did not provide for protest and judicial review of general price orders by the great mass of consumers because of an apprehension that this might cause delay and difficulty in administering the Price Control Act with the efficiency and expedition deemed

necessary to accomplish its broad purpose.[5] Only a few categories of persons whom the Act affected and whose protests, if reviewed would not have these consequences, were specifically permitted by the Act to protest and have general price orders affecting them judicially reviewed.[6] The Administrator and the courts have adhered to this congressional policy. See *e. g. Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

Procedural Regulation No. 1 of the Office of Price Administration, 7 Fed. Reg. 971, defined a person as "subject to" a general price regulation or order, and therefore entitled to protest and obtain judicial review of it, only when such regulation or order "prohibits or requires action by him." The Emergency Court of Appeals sustained the regulation which contained this definition. *Buka Coal Co.* v. *Brown*, 133 F. 2d 949, 952. But in other special situations not directly involving general price-fixing orders the words "subject to" have been construed more broadly by the Administrator and the Emergency Court of Appeals.

Revised Procedural Regulation No. 1, 7 F. R. 8961, promulgated by the Administrator, provides that agricultural producers may protest an order which denies them a subsidy granted by Congress as one of the mechanisms of the price control program, the regulation stating that such a producer "shall be considered to be subject to a maximum price regulation." And in *Illinois Packing Co.* v. *Snyder*, 151 F. 2d 337, the Emergency Court of Appeals held that meat packers, denied such a subsidy under

[5] The congressional purpose in this regard has been summarized in our previous decisions in *Yakus* v. *United States*, 321 U. S. 414, 423, 431–433, 439, 441 and *Bowles* v. *Willingham*, 321 U. S. 503, 513, 520–521.

[6] Section 4 (a) of the Act lists the classes of persons to be punished for disobedience of the provisions of a regulation or order and therefore *ipso facto* "subject to" it as sellers of commodities, buyers of commodities in the course of business and landlords.

regulations of the Defense Supplies Corporation promulgated under the same authority on which Office of Price Administration orders were based, were subject to and could protest against such regulations. The Court there said that:

> "If anybody could be 'subject to' a provision of the subsidy regulation, complainant certainly would meet this requirement, since it claims to be excluded from the subsidy by a discriminatory and unlawful condition inserted in the subsidy regulation by Amendment No. 2. Since § 204 (d) confers upon this court 'jurisdiction to determine the validity of any regulation or order issued under Section 2,' and since Amendment No. 2 is such a regulation or order, it is inadmissible to put upon the phrase 'any person subject to any provision' of a regulation under Section 2 an interpretation which would make it impossible for anyone to invoke our jurisdiction in this type of case, especially one who, like complainant, is most immediately and directly prejudiced by the challenged provision of the subsidy regulation." *Illinois Packing Co.* v. *Snyder*, *supra*, at 338–339.

Thus it appears that the Administrator and the Emergency Court of Appeals have determined that the question of whether a person is "subject to" the Act is dependent to some extent upon whether the order immediately, substantially and adversely affects him, as well as whether the order requires or prohibits action by him. Under these standards we think the tenants here were "subject to" the order.

Whether the regulations gave the tenants a "vested right" to remain in possession is not decisive of their right to protest or obtain judicial review. However that may be, general regulations prohibited these landlords from evicting the tenants unless the Administrator granted a certificate. The Emergency Price Control Act was intended in part to prevent excessive rents in the public

interest,[7] and the very anti-eviction regulations under which the Administrator granted the eviction certificate here were specifically designed to prevent manipulative renting practices which would result in excessive rents.[8] Those regulations have been held valid by the Emergency Court of Appeals, *Taylor* v. *Brown*, 137 F. 2d 654, 662–663,

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[7] Among other provisions showing that such was the purpose of the Act, § 2 (d) provides in part that the Administrator may promulgate regulations or orders to "prohibit speculative or manipulative practices . . . or renting or leasing practices (including practices relating to the recovery of the possession) . . . which in his judgment were equivalent to or likely to result in price or rent increases . . ."

[8] The landlords here claimed to be recent purchasers of stock in a cooperative ownership arrangement. Regulation 6 (b), here involved, was promulgated, according to the Administrator, for the following, among other, stated reasons:

"In recent months the problem of evictions and potential evictions in connection with the sale of stock in cooperative housing corporations has reached serious proportions. Apartment houses and other multiple-unit premises are being sold to cooperative corporations. These corporations in turn sell stock in the corporation which entitles the purchaser to a "proprietary lease" of a dwelling unit in the structure. In selling stock in the cooperative, tenants usually are first approached. They are under heavy pressure to purchase stock because the alternative is likely to be eviction in favor of the ultimate purchaser of the stock. If the stock is not purchased by a tenant, it is then sold to another person who obtains a proprietary lease of the tenant's dwelling unit and seeks possession of that unit for personal occupancy.

. . . . . .

"In the past cooperative housing corporations were virtually unknown in most defense-rental areas. Since rent control there has been a tendency to make more frequent use of the device and there is every indication that this will accelerate.

. . . . . .

". . . . During recent months, as the housing shortage has become more acute, the cooperative corporations or other owners of this stock have begun to sell it to purchasers who become entitled to proprietary leases." Statement of Reasons Accompanying Amendment 17 to the Rent Regulation for Housing for the New York City Defense Rental Area.

and their validity is not here challenged. If these tenants cannot "protest" this order issued under these regulations, no one can; and if they cannot challenge it in the Emergency Court of Appeals, they cannot effectively challenge it at all.

We cannot say that tenants who are about to be evicted from their apartments on account of the order are not "subject to" it. We are persuaded that these tenants would be required to act by the issuance of the certificate. They would either have to move themselves and their possessions to another abode, which might be difficult or impossible to obtain, or undertake defense of eviction proceedings in the State courts, which proceedings, but for the certificate, would have been barred by the regulation promulgated under the Act. For the same reason, it seems apparent that they would be immediately, substantially, and adversely affected by the order.

This situation is altogether different, in terms of administrative complications and the impact of the order on the individual, from one in which a consumer member of the public wishes to attack a general price-fixing regulation which will require him to pay higher prices, or even a tenant to pay higher rent. For this reason, the legislative history relied on by the Administrator, thought to indicate a purpose not to make such general price-fixing orders open to widespread challenge, has no relevancy here. While the scope of judicial review authorized by the Act is a limited one, *Illinois Packing Co.* v. *Snyder*, *supra* at 339, we think that these tenants were entitled to have their protest considered by the Administrator and that the Emergency Court of Appeals has jurisdiction of their complaint.

Reversed.

THE CHIEF JUSTICE, MR. JUSTICE FRANKFURTER and MR. JUSTICE BURTON dissent.